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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 758 OF 2003

Madhukar Aadappa Gaikwad ... Appellant

V/s

The State of Maharashtra ... Respondent

Mr. V.N. Kamble, Advocate for the appellant.

Mr. P.S. Hingorani, A.P.P. for the respondent State.

CORAM: D. G. DESHPANDE &
SMT. NISHITA MHATRE, JJ.

DATED: 11TH JUNE, 2007.

ORAL JUDGMENT (PER SMT. MHATRE, J.):

1 This appeal is directed against the judgment and order dated 31.3.2003 of the II Ad-hoc Additional Sessions Judge, Kolhapur. The accused appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to life imprisonment. He was also directed to pay a fine of Rs.2,000/-.

2 The case of the prosecution is that, in the night intervening between

31.4.2002 and 1.5.2002, the accused killed his wife by strangulating her with a telephone wire. The victim had written on her left forearm with a ball-pen in Marathi "Ekyk ekञ्या uo&;kus Bkj ekjys iksfyl dsl djk"* i. e. my husband has killed me file a case. After the police were informed of the incident, at about 7.30 am. a photographer was called and photographs of the dead body were taken. An inquest panchanama and a spot panchanama was drawn, after which the accused was arrested. The prosecution has alleged that the accused often harassed the victim after their marriage 11 months prior to the incident. The accused was tried for murdering his wife and has been found guilty by the Sessions Court.

3 The prosecution examined 13 witnesses in support of its case. PW-3 is the brother of the deceased and PW-4 is her mother. PW-7 and PW-8 were neighbours of the deceased. PW-10 is the medical officer who has performed the post-mortem examination. Besides these witnesses, PW-1, PW-2 and PW-5 are the panch witnesses who have proved the spot and the inquest panchanamas as also the recovery of the telephone wire at the instance of the accused. PW-11, PW-12 and PW-13 are the police officers who were involved in the investigation of this case.

4 The learned advocate appearing for the accused has submitted before us that the impugned judgment and order is perverse and, therefore, is required to be set aside. He submits that the victim's death was suicidal and not homicidal. She has been found hanging from a beam by the accused. The accused was not in the house when the incident occurred at around 2.00

am. on 1.5.2002 as he had gone to answer the call of nature. The learned advocate submits that the reliance placed by the prosecution on the writing found on the left forearm of the deceased is misplaced since the prosecution has not proved that it was the deceased who had written those words. He submits that if the prosecution case is to be believed that the accused had in fact strangulated her, then it was well nigh impossible to write anything on her forearm while she was being strangulated. He, therefore, submits that the prosecution has failed to prove its case against the accused to the hilt.

5 On the other hand, the learned A. P. P. points out that the victim was married to the accused only 11 months prior to the incident. She was suffering harassment from him soon after they were married. The victim had complained of the harassment meted out to her, both, to her brother who has been examined as PW-3 and to her mother who has been examined as PW-4. A relative of the deceased who has been examined as PW-6 has also stated that he knew about the ill-treatment meted out to the victim by the accused. Besides this, the learned A. P. P. points out that the writing on the forearm of the deceased implicated the accused and there was no reason to disbelieve that writing. Apart from this, he points out that the medical officer who has opined that the death occurred due to intra cranial haemorrhage and strangulation resulting in cardio-respiratory failure. He also points out the injuries from the postmortem report which are as follow:

> (1)A rope mark over neck in front below mandible (sub-mandibular region) brownish in colour. 8 cm x 2 cm subcutaneous and patechi , tissue crush (haemorrhage).

(2) Swelling over Lt. Temporal region.
(3) Swollen Lt. Eye ball and eye-lids.
(4) Bleeding from Ltd. Ear seen.

According to the learned A. P. P., it therefore appears that the accused had first assaulted the victim and then strangulated her. The learned A. P. P. submits that the victim could have, after sustaining aforesaid injuries, written the statement on her forearm after which the accused strangulated her.

6 We have, with the assistance of the advocate for the accused and the learned A. P. P., perused the entire evidence on record. We have also considered the impugned judgment and found that the inferences drawn by the Sessions Court are correct. However, with a view to ensure that no injustice or prejudice is done to the accused, we have independently assessed the evidence and have arrived at the same conclusion.

7 The prosecution has, through the evidence of PW-3 and PW-4 proved the ill-treatment meted out to the deceased by the accused. They were married for a mere 11 months prior to the incident. The accused treated her well for the first three months after which the harassment commenced. We have no reason to disbelieve this evidence on record.

8 The accused informed the police that he had left the house at about 2.00 am. on 1.5.2002 to answer the call of nature. There is evidence on record that he had to walk a distance of 1 km for this purpose. An attempt was made by the learned advocate for the accused to submit that

during this period when the accused was not present in the house, the victim had committed suicide. If that was to be accepted, then the natural conduct of the accused after returning home would be to inform his neighbours and the police. The neighbour of the accused PW-7 heard somebody weeping in the house of the accused. PW-7 entered the house of the accused and found him weeping and his wife i. e. the deceased lying on a mat. According to this witness, the relatives of the accused had arrived there at that point of time. PW-8 claims that he heard people crying inside the house of the accused between 4.00 and 4.30 am. on 1.5.2002. He has reiterated this in his cross-examination. He has also stated that he telephoned the brother and relatives of the accused and the victim and informed of the incident.

9 Thus, assuming the accused was not in the house when the incident occurred, in any event by 4.00 am. he knew that his wife was dead and according to him, had committed suicide. He ought to have then informed the police immediately. However, the accused did not do so and the police were intimated by the victim's relatives after they reached the spot at about 6.00 am. in the morning. Thus the story of the accused that he was not present when the incident occurred, cannot be believed. Since this case is based on circumstantial evidence, it would be necessary to consider the circumstances which the prosecution has been able to prove in this case, namely, (1) the accused and the victim were married merely for 11 months prior to the incident; (2) the accused ill-treated his wife; (3) the accused and the victim last been seen together; (4) the unnatural conduct of the accused when he found that his wife has committed suicide, according to

him; (5) recovery of wires at the instance of the accused; (6) the opinion of PW-10 that the victim's death was homicidal and not suicidal.

10 In our opinion, all these circumstances have been proved by the prosecution. There is no suggestion made by the accused while cross-examining the witness for the prosecution that anybody else had a chance to enter the house in his absence and kill the victim since his entire case is based on the footing that she committed suicide. The doctor who is examined as PW-10 observed ligature marks on the neck of the deceased while performing the postmortem examination. He has opined that the ligature marks could be caused by the wires which were discovered at the instance of the accused. It is true that there is no evidence on record to establish without doubt that the victim had written the incriminatory statement on her forearm. There is no evidence firmly establishing that the writing on the forearm was antemortem. However, even if we ignore the writing, the aforesaid circumstances proved by the prosecution unerringly point to the guilt of the accused.

11 In our opinion, the aforesaid circumstances which form a chain, prove that the accused is guilty of committing culpable homicide amounting to murder.

12 Hence, the appeal is dismissed.

(D.G. DESHPANDE, J.)

(SMT. NISHITA MHATRE, J.)